

2000 WL 35433709 (Hawai'i Cir.Ct.) (Trial Motion, Memorandum and Affidavit)
Circuit Court of Hawai'i.

State of Hawaii, Plaintiff,
v.
Raquel BERMISA, Defendant.

CR. No. 00-1-0385.
October 11, 2000.

State's Memorandum of Law in Support of Motion in Limine

THE STATE OF HAWAII, by and through MICHAEL L. PARRISH, Deputy Attorney General, State of Hawaii, respectfully submits the following memorandum of law in support of State's Motion in Limine. This memorandum is presented to clarify the facts and law surrounding this matter, and is submitted in addition to any evidence and argument to be adduced at the hearing on this matter.

RELEVANT FACTS

Raquel Bermisa (hereinafter "Defendant") informed the State of Hawaii via letter that she intends to introduce evidence of H.R.S. 841 Inquests Coroners at the trial in this matter presently set for October 16, 2000. (Exhibit 1). Chapter 841 is law and not fact. (Exhibit 2) The victim in this case was admitted to Pali Momi Medical Center at 11:31 a.m. August 9, 1999. (Exhibit 3) The victim was pronounced dead at 3:30 p.m. August 10, 1999. (Exhibit 4) The State has not received any discovery from Defendant regarding this case. The State has not received any notice of intent to use evidence other than the aforementioned H.R.S. Section. The State has reason to believe that Defendant may attempt to introduce of or inquire about an unconfirmed report of **financial exploitation** involving Wayne Morikawa. (Exhibit 5).

ARGUMENT

a. Irrelevant Evidence Inadmissible

The Defendant wants the Court to take judicial notice of H.R.S. Section 841 Inquests Coroner, and intends to introduce evidence of that chapter at trial. However, Chapter 841 has no tendency to make the existence of any fact that is of consequence to the determination of this action more probable or less probable than it would be without Chapter 841. *H.R.E. 401*. Therefore, Chapter 841 is not relevant and is not admissible. *H.R.E. 402*.

Furthermore, Chapter 841 is a statement of the law, not evidence, and therefore should not be admitted as evidence, and submitted to the jury as evidence. Chapter 841 is the body of law that provides for appointment of a coroner for each county, deputies, their duties, function and powers. The Defendant has not challenged the qualifications of the State's pathologist, who is certified by the American Board of Pathology, the only prerequisite for the person conducting an autopsy under Chapter 841.

The State anticipates that the Defendant intends to introduce the law (Chapter 841) as evidence and argue to the jury that there were not unusual or suspicious circumstances preceding this autopsy by virtue of the fact that the autopsy was performed by a licensed pathologist other than the county coroner or his deputy. Such an argument would be specious, pure speculation, misleading, and lacking any foundation. Furthermore, it would be an outright misstatement of the facts.

The facts are that the victim died more than twenty four (24) hours after admission to Pali Momi Medical Center. The cause of death was cardiopulmonary arrest as a consequence of sepsis, none of which - in and of itself - represents a suspicious or unusual circumstance. To suggest that the coroner must have evaluated the physical evidence, found no suspicious or unusual circumstances, and therefore declined to conduct an inquiry and autopsy is disingenuous. The probative value of Chapter 841 is mere speculation, and therefore, can only be substantially outweighed by the danger of confusion of the issues, and misleading the jury. [H.R.E. 403](#). The fact of the matter is that the State's top law enforcement officer, the Attorney General, exercised his option to have an autopsy performed in the interest of public safety and welfare under Chapter 841-14. Argument to the contrary is irrelevant to a determination of the facts in dispute in this case. As such, the proffered evidence should be, excluded. [H.R.E. 402](#).

b. Character Evidence and Bad Acts

Defendant has not filed a notice of intent to use evidence of an unconfirmed report of financial abuse by Wayne Morikawa as required. [H.R.E. 404\(b\)](#) Nevertheless, in an abundance of caution, the State respectfully requests that any reference to such evidence be precluded. As an unconfirmed allegation, the evidence would not amount to "Relevant evidence" under [H.R.E. 401](#). Such evidence would not be probative of any fact that is at issue in the trial. [H.R.E. 401](#). This is especially so since the allegation was checked out, and not confirmed. Since evidence of the report and its non-confirmation would not be relevant, it is not admissible. [H.R.E. 402](#).

Assuming arguendo such evidence would be probative under [H.R.E. 404\(b\)](#), (the state does not concede this point, nor has Defendant demonstrated the relevance of the proffered evidence) its probative value is very suspect because the allegation is unconfirmed. Therefore, the probative value is substantially outweighed by the danger of unfair prejudice, and misleading the jury. [H.R.E. 403](#). As such, the proffered evidence may be, and the State submits should be, excluded. [H.R.E. 403](#).

Assuming arguendo such evidence is character evidence it does not constitute an opinion or reputation referring to character for untruthfulness. [H.R.E. 607](#) and [608\(a\)\(1\)](#) Furthermore, because the allegation is unconfirmed it is not probative of untruthfulness, and therefore not admissible under [H.R.E. 608\(b\)](#).

c. Materials not Provided Pursuant to the Rules Governing Discovery

Defendant has not provided to the State any Discovery in this case. As such, pursuant to [H.R.P.P. Rule 16\(e\)\(9\)](#), the State respectfully requests that any evidence offered by Defendant other than that listed in her witness and exhibit list be excluded. In the event the Court concludes such evidence should be admitted, the State respectfully requests that it be given sufficient time to examine, investigate, and rebut such evidence, and that the Defendant be sanctioned accordingly.